

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

SHANICE KLOSS, individually and on behalf
of similarly situated individuals,

Plaintiff,

v.

ACUANT, INC., a Delaware corporation,

Defendant.

Case No. 1:19-cv-06353

Hon. Charles P. Kocoras

**DEFENDANT ACUANT INC.'S MOTION TO DISMISS PLAINTIFF'S FIRST
AMENDED COMPLAINT**

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendant Acuant, Inc. ("Acuant") hereby moves to dismiss Plaintiff's First Amended Class Action Complaint ("FAC") for failure to state a claim. In support hereof, Acuant is contemporaneously filing a supporting Memorandum of Law.

A complaint should be dismissed under Rule 12(b)(6) where the complaint "fails to state a claim upon which relief can be granted." Plaintiff's FAC fails to state a claim under the Illinois Biometric Information Privacy Act ("BIPA")—the FAC's only count. As an initial matter, BIPA does not apply to a business-to-business service provider such as Acuant that had no direct dealings or relationship with Plaintiff or any other potential class member. Additionally, the FAC fails to assert even the most basic facts required to state a claim under BIPA, including how, where, when, and/or through which business Plaintiff interacted with Acuant's software.

The Court should also dismiss the FAC in its entirety for the wholly separate reason that BIPA violates the Illinois Constitution because it is "special legislation" that applies only to

certain private companies while carving out other private companies, with no rational basis for the distinction.

Finally, even if the FAC were to otherwise survive dismissal in whole or in part, the Court should at a minimum strike the FAC's prayers for damages, because Plaintiff failed to plead any facts showing negligence, recklessness, or intent as required to recover damages under BIPA.

WHEREFORE, Defendant respectfully requests that the Court grant this motion to dismiss with prejudice.

/s/ *Tiffany L. Carpenter*

One of Defendant's Attorneys

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on December 13, 2019, she electronically filed the foregoing notice and the document to which it refers with the Clerk of this Court using the CM/ECF system, which generated a Notification of Electronic Filing to all persons currently registered with the Court to receive such notice in the above-captioned case.

/s/ Tiffany L. Carpenter

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